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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,163

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Ragu Saimanohar

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/805,163

Applicant(s)

SAIMANO HAR ET AL.

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 13-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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Claims 2-4, 13-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, it is unclear what is intended by the features in parentheses; it is not known if applicant intends for such features to be part of the claimed limitation. If so, they must be taken out of parentheses because features in parentheses are not considered part of the claim. Line 29, the phrase "the defatted soy flour" still has problem with antecedent basis as set forth in the previous office action.

Claim 13 has the same problem as claim 2 in the use of parentheses. Additionally, claim 13 is vague and indefinite because it is not known how the snack product with the ingredients as recited is made. The body of the claim only recites whole wheat flour, roasted defatted soy flour, dry milk and baking powder are mixed to form a mixture. How are the remaining ingredients incorporated into the snack food? How is the snack food formed; the snack food is not formed by just forming a mixture of the four ingredients. The claim is incomplete for not reciting the essential steps.

Claim 14 is vague and indefinite; it is not known how the step recited in claim 14 is connected or related to the step recited in claim 13 in forming the snack product.

Claim 15 has the same problem as claim 2 with respect to the use of parentheses. Additionally, claim 15 is vague and indefinite in that it is not known how the snack product is formed. The snack product is not formed by just forming a homogenous dough. The body of the claimed is not commensurate in scope with the preamble because there is no recitation of how the snack product is formed. The body of the

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claim only recited forming a homogeneous dough. On line 39, it is not known if the premix of vitamins and minerals contains the same minerals and vitamins as recited above for the snack product.

The new rejection is necessitated by amendment.

Claims 13-14 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a method having specified steps as disclosed in the specification and claim 2, does not reasonably provide enablement for the process as recited in claims 13-14. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to carry the invention commensurate in scope with these claims.

Claims 13-14 recite a process for snack product comprising the ingredients as listed; however, the claims do not recite the processing steps to make the product. The product containing ingredients as recited is not made by just combining 4 ingredients to form a mixture. The claims do not recite the processing parameters to make the product having the composition as claimed; thus, the claims are not enabling within the scope claimed.

The new rejection is necessitated by amendment.

Claims 2-4, 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prorise et al in view of Engelman et al and Tanaka et al.

Prorise et al disclose a method of forming nutritious snack food products. The food product comprises vegetable protein materials such as soy flour, peanut flour, cereal protein etc.. mixture thereof, milk proteins such as nonfat dry milk solids, whey

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protein, caseins etc., fat or oil, carbohydrates including flour sugar alcohol, glucose, xylose, fiber materials, adjunct ingredients such as leavening agent, emulsifiers, processing aids etc., flavoring agents and vitamins as shown on columns 21-22.

Prosise et al disclose the steps of forming cracker as shown on columns 46-47. (see columns 10,13,15,18,19,21-23)

Prosise et al do not disclose the individual steps of forming the whole wheat flour, peanut paste, sesame paste, the use of roasted wheat germ, the thickness, diameter as claimed, the time and temperature of baking as claimed and the product having the composition as claimed.

Engelman et al disclose a process of making low carbohydrate product. They teach the use of a nutritionally complete protein food such as sesame seeds formed into protein powder. (see col. 3)

Tanaka et al disclose it is known in the art to roast soy materials to reduce beany or off-flavors. (see col. 4 lines 18-20)

Prosise et al teach to use flour in making the snack product; it would have been obvious to use whole wheat flour to further enhance the nutrition of the product because whole wheat flour contains more fiber and nutrient than regular flour. The use of whole wheat flour is equivalent to the claimed step of powdering wheat kernels to form flour. If one does not want the convenient of using already made wheat flour, it would have been obvious to start from scratch using wheat kernels. The selection of any particular size would have been a matter of preference. The same is true with the use of peanut flour versus grinding peanut into a paste. If one wants to start from

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scratch, it would have been obvious to use peanut. It would have been within the skill of one in the art to determine the roasting temperature and time. It would have been obvious to roast the soy flour for the reason well known in the art as shown by Tanaka et al. It would have been within the skill of one in the art to determine the appropriate roasting time and temperature through routine experimentation. It would have been obvious to use sesame seed powder as taught by Engelman et al to have a complete protein material in the Prosise et al product because they teach a mixture of protein materials can be used. It would have been obvious to roast the sesame seeds when desiring a toasted flavor. Prosise et al teach fiber materials and other cereal material can be added. Thus, it would have been obvious to add wheat germ because it is a material packed with protein, fiber, vitamin and mineral. The addition of wheat further enhances the objective of the Prosise et al food product. It would have been obvious to roast the wheat germ when wanting the toasted flavor. One skilled in the art can readily determine the roasting time and temperature through routine experimentation. It would have been obvious to one skilled in the art to determine the amounts of ingredients through routine experimentation depending on the type of product made and the flavor, taste, texture and nutritional profile desired. It would have been obvious to vary the thickness of the dough sheet depending on the type of product and the texture wanted. It would have been obvious to cut the product in any size; this would have been a matter of preference. It would have been within the skill of one in the art to determine the appropriate baking time and temperature depending on the product made and the degree of baking wanted. Such parameters are well within the determination of one in

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the art. The properties of the wheat claimed are conventional and would have been present in commercially available flour. The specific sequences are matter of optimization. It would have been obvious to one skilled in the art to determine the mixing parameters that would give the most optimum working conditions and product the most optimum product. It would have been obvious to pack the product for storage and distribution. It would have been obvious to one skilled in the to vary the amount of ingredients and to add various nutritional additives to vary the composition of the product depending on the nutritional profiled wanted for the product. Such parameter is a result-effective variable depending on the type of product wanted and would have been well within the determination of one skilled in the art.

In the response filed 11/6/07, applicant argues the references cannot be combined because they appear to be substantially mutually exclusive. This argument is not persuasive because the references are not mutually exclusive since they are directed to nutritious food product containing various additives. For example, Prosise disclose the use of soy flour in the forming of food product. Tanaka et al teach roasting soy flour reduces beany or off-flavors. Thus, one would have been motivated to use the Tanaka et al teaching of such purpose. Applicant argues a significant constituent of the Prosise et al products is a nondigestible product Olean. It is not clear how applicant arrives at such conclusion. However, regardless of Olean being a major constituent or not, it does not exclude the use of roasted soy flour or sesame seed or other nutritional additives because the Prosise disclosure is directed to nutritional foods. Applicant states Engelman et al includes 91% soya powder significant percentages of eggs and

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curds which are not found in applicant's formulation. Applicant's claims do not exclude such components; furthermore, the Engelman reference is only relied upon to show sesame seed as providing good protein source. Applicant comments that Tanaka et al disclose the use of full fat soybean flakes. The Tanaka et al reference is used to show roasting of soy material to reduce beany and off-flavor. The selection of full fat or defatted flour would have been an obvious matter of choice depending on the fat content desired.

Applicant's arguments filed 11/6/07 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 29, 2008

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700